IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11116 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHAD DAHYABHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11116 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

MR JOSHI A.G.P.for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

The petitioner is detained under provisions contained in Section 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential

Commodities Act, 1980 ('P.B.M. Act' for short), by virtue of order passed by the District Magistrate, Vadodara, on September 22, 2001, in exercise of powers vested in him by Section 3 of the said Act and the petitioner challenges the order of detention in this petition preferred under Article 226 of the Constitution of India on various grounds.

2. The grounds of detention dated September 22, 2001 served on the petitioner detenu indicate that five persons other than the petitioner were found to have been involved in theft of crude oil from underground pipe line of O.N.G.C. lying between Gandhar/Ankleshwar at village Anti, Taluka Padra. On August 29, 2001 several documents including invoices were found from those persons and it is found by detaining authority that the petitioner was instrumental in providing those forged bogus bills and thereby to have abetted the activities of the persons named in the ground of detention in para 5 which is found to be detrimental to the supply of essential commodities. The detaining authority observed that it has considered the possibility of resorting to alternative less drastic remedy under the ordinary law but it was considered inadequate because if such prosecution is launched, the petitioner may apply for bail, may obtain bail and after being released on bail may pursue the activities. The detaining authority observed that the detenu is required to be immediately prevented from pursuing his activities and, therefore, the detention is the only effective remedy available with the detaining authority and, therefore, the order was passed.

3. The learned advocate appearing for the petitioner has restricted his argument to the following contentions.

3.1. The detaining authority was not alive to the fact that prosecution was already launched against the present detenu along with the other persons named in para 5 of the ground of detention which is indicated from communication addressed to the District Supply Officer, Baroda by Police Inspector, L.C.B. Baroda on September 21, 2001 which forms part of the compilation supplied to the detenu. The learned advocate submitted that when this document is supplied to the detenu, it necessarily indicates that this was placed before the detaining authority and still the detaining authority has observed that taking steps under ordinary law is not possible when in fact, the prosecution was already launched. This indicates that the detaining authority has not properly studied the papers before passing the orders. The

satisfaction recorded by the detaining authority therefore would be vitiated and the order of the detention therefore may be quashed.

3.2. Learned advocate Mr.Lakhani, also submitted that the detaining authority was not aware about the fact that the other accused persons had applied for bail and their bail applications were rejected and, therefore, the possibility of the petitioner applying for and getting the bail considered by the authority was not proper. In fact, the orders of rejection were not placed before the detaining authority by the sponsoring authority and therefore there was absence of complete material before the detaining authority and therefore, the order is passed in absence of such relevant material and, therefore, the order would stand vitiated. Mr.Lakhani urged that the petition may therefore be allowed.

4. Learned A.G.P. Mr. Joshi, opposes the petition on behalf of respondents Nos.1, 2 and 3. Respondent No.4 is represented by learned counsel Ms.Davawala.

5. Affidavit-in-replies are filed by Deputy Secretary to the Government of Gujarat as well as Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, which are taken on record.

5.1. Learned advocate Mr.Lakhani has placed on record the copy of communication addressed to the D.S.O. Vadodara by Police Inspector L.C.B. Vadodara (Rural) on 21.9.2001 which form part of the compilation supplied to the detenu.

6. At the outset it may be recorded that it transpired during the course of argument that the persons named in para 5 of the ground of detention that is the persons who are principally involved in the activities were detained and have been released from detention as their petition have been accepted by this Court. The present petitioner is only alleged to have aided and abetted the activity of the principal miscreants.

7. Apart from the above aspect the case before this Court indicates that the detaining authority while passing the order does not seem to have studied the papers placed before it. The detaining authority has observed that if steps are taken under ordinary law, the detenu may apply for bail, may obtain bail and thereafter may continue his illegal activities and, therefore, in the opinion of the detaining authority steps under the

ordinary law cannot be the taken and the petitioner is required to be detained under P.B.M. Act whoever in fact as it is clear from the communication between the Police Inspector L.C.B. and D.S.O. Vadodara, which forms part of the compilation provided to the detenu (necessarily meaning that it was placed before the detaining authority for consideration) that prosecution was already launched against the present detenu and that he was to be arrested. Thus action under ordinary law was already taken. It is clear from that communication that bail application of the other miscreants was rejected by the Court and they were in judicial custody. The satisfaction of the detaining authority that the detenu is likely to get bail and pursue the activities and therefore detention is the only remedy was without any basis. In this regard the decision of the Apex Court in Amritlal v. Union Government A.I.R. 2000 S.C. 3675 can be profitably be used.

8. In view of the above discussion the satisfaction of detaining authority is found to be vitiated because of non-application of mind and non-consideration of relevant material. It vitiates the order in question. The order therefore deserves to be quashed by allowing this petition.

9. The petition is allowed. Order passed by District Magistrate, Vadodara dated 22.9.2001 is hereby quashed and set-aside. Detenu Harshad Dahyabhai Patel be released from detention forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J.)

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